

## **REMARKS**

Applicant acknowledges receipt of the Office Action dated November 2, 2007. Authorization to charge the requisite three-month extension fee is presented below. Claims 66-67, 71, 74 and 76-81 were pending prior to the present amendment and response.

With the present amendment and response, Applicant amends claim 1 to recite ranges for the chelating agent, cocodimethyl amine and cocodimethyl ammonium chloride. Support for this amendment is found throughout the specification and as exemplified as "Adjuvant 6" set forth in [0142] of the published specification as well as paragraphs [0131].

Claims 71, 74, 76-78 are cancelled.

New claims 99-103 are introduced with the present amendment. Support for claims 99-102 is found in paragraph [0142] of the published specification.

No new matter is introduced. Reconsideration is earnestly solicited.

### **Rejection of Claims 66-67, 71 and 79-81 under 35 U.S.C. §102(b) as anticipated by Moore**

The Examiner has rejected claims 66-67, 71 and 79-81 under 35 U.S.C. §102(b) as anticipated by Moore's U.S. Patent No. 5,180,587. Although Applicant does not acquiesce in the propriety of this rejection, Applicant submits that with the present amendment to claim 1, Moore does not anticipate claim 1. That is, Moore does not teach the use of the recited quaternary amine or the exemplified formulation comprising thiophanate-methyl. For this reason, the rejection of Moore should be withdrawn.

### **Rejection of Claim 74 under 35 U.S.C. §103(a) as being unpatentable over Moore**

The Examiner has rejected claim 74 under 35 U.S.C. §103(a) as being unpatentable over Moore's U.S. Patent No. 5,180,587. The Examiner admits that Moore does not teach using thiophanate-methyl as claimed, however, the Examiner contends it would have been obvious to one of ordinary skill to use thiophanate-methyl in the composition because Moore allegedly suggests its use.

With the present amendment, claim 74 is cancelled. Therefore, the rejection is obviated.

### **Rejection of Claim 78 under 35 U.S.C. §103(a) as being unpatentable over Moore in view of West**

The Examiner has rejected claim 78 under 35 U.S.C. §103(a) as being unpatentable over Moore's U.S. Patent No. 5,180,587 in view of West's U.S. Patent No. 5,312,558. The Examiner then proceeds to admit that Moore does not teach the use of cocodimethyl ammonium chloride, however, the Examiner contends it would have been obvious to one of ordinary skill to use cocodimethyl ammonium chloride for enhancement of pesticide activity.

With the present amendment, claim 78 is cancelled. Therefore, the rejection is obviated.

**Rejection of Claims 66, 71, 74, 76-77, 79 and 81 under 35 U.S.C. §103(a) as being unpatentable over Kurita et al.**

The Examiner has rejected claims 66, 71, 74, 76-77, 79 and 81 under 35 U.S.C. §103(a) as being unpatentable over Kurita et al. The Examiner admits that Kurita does not teach a chelating agent and a fungicide or a chelating agent in conjunction with a fungicide and quaternary ammonium salt. The Examiner does, however, argue that one of ordinary skill in the art would have been motivated to make a formulation with these components because Kurita allegedly suggests the adjuvant composition comprising a quaternary ammonium salt and a chelating agent to enhance the efficacy of agricultural chemicals.

Kurita et al. disclose an adjuvant composition for agricultural chemicals comprising at least one sorbitan/fatty acid ester surfactant (A) and at least one surfactant (B) selected from a group consisting of resin acid surfactants and quaternary ammonium salt surfactants. See column 2, lines 3-43. Kurita et al. fail to teach or even suggest a composition comprising 0.5 to 30 weight % of at least one chelating agent; 0.5 to 30 weight % cocodimethyl amine; 0.5 to 30 weight % cocodimethyl ammonium chloride; and at least 0.5 weight % of thiophanate-methyl (dimethyl(4,4'-o-phenylenebis(3-thioallophanate))). In fact, no teaching, suggestion or motivation in the prior art that would have led one of ordinary skill to modify Kurita et al. to arrive at the composition recited in claim 1. To conclude that Kurita et al. "suggest" the composition of amended claim 1 would be impermissible hindsight.

Even if Kurita was modified as proposed by the Examiner, the resultant modification would fall short of yielding the claimed invention because Kurita et al. fail to teach the use of the particular ranges now recited in claim 1. Further, one of ordinary skill in the art appreciates that the chemical arts are unpredictable and that results disclosed in the Examples comprising the ranges of components of claim 1 are unexpected. Even if Kurita et al. did disclose the use of quaternary amine compounds in the absence of at least one sorbitan/fatty acid ester surfactant,

there exists many quaternary amine compounds that are complex in structure. Thus, the Examiner must show why the prior art suggests reason or motivation to make the claimed composition (i.e., 0.5 to 30 weight % cocodimethyl amine and 0.5 to 30 weight % cocodimethyl ammonium chloride).

For these reasons, Applicant submits that all pending claims are in condition for allowance.

**CONCLUSION**

Applicant submits herewith a three-month extension fee, however, the Commissioner is hereby authorized to charge any fee deficiencies or credit any overpayment to Deposit Account No. 09-0528 (Attorney Docket No.: C241 1010.2).

Respectfully submitted,

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